

Upon receipt of the Notice it was determined that, as explained in detail below, the Notice appears to have been based on an obvious typographical error in the application as originally filed. Applicants and their counsel, therefore, are of the view that the new claims (nos. 17-27) submitted in the February 21, 2006 Amendment are, in fact, compliant with the election made in response to the Restriction Requirement contained in the Office Action mailed June 17, 2005 and thus the Amendment filed February 21, 2006 should be considered.

An attempt was made to have a telephone interview with the Examiner, Dr. Lieto, in order to clarify this matter, but it was learned that the Examiner would be out of the Office until at least August 6, 2006. Applicant's representative, therefore, conducted a telephone interview with the Examiner's supervisor, Dr. Ram Shukla, on July 24, 2006 to explain applicants' position, i.e. that the aforesaid obvious typographical error had led to a misunderstanding regarding the invention by Examiner Lieto, which caused him to erroneously issue the Notice of Non-Compliant Amendment.

At the conclusion of the July 24th interview with the Examiner's supervisor, applicants' representative was requested by Dr. Shukla to submit a written response to the Notice summarizing for Examiner Lieto the matters discussed during the interview. This is to permit Examiner Lieto to comprehend that, as demonstrated below, new claims 17-27 are actually directed to the invention elected by applicants. Thus, the February 21, 2006 Amendment should be deemed to be compliant and it should be considered by the Examiner. It is submitted that the remarks below are substantially in accordance with the matters discussed with Examiner Shukla during the July 24, 2006 telephone interview.

In an effort to clarify the invention for Dr. Shukla, applicants' representative directed his attention during the interview to Paragraph [0031]; Paragraph [0040]; and the Sequence Listing portions of the application. As taught at, *inter alia*, those locations, SEQ ID NO:1 is a nucleotide sequence encoding IL-6; SEQ ID NO:2 is a nucleotide sequence encoding a signal portion of IL-2; SEQ ID NO:3 is a nucleotide sequence encoding IL-15; and SEQ ID NO:4 is a nucleotide sequence encoding a chimera comprised of IL2 & IL-15 (i.e. a combination of SEQ ID NO:2 and SEQ ID NO:3).

Next, it was noted that claim 1 as originally filed contains what is therefore an "obvious" typographical error. That is, the claim recites, "... a DNA sequence (SEQ ID NO: 2) expressing IL-15" (emphasis supplied by applicants), wherein the claim should have stated, "... a DNA

sequence (SEQ ID NO: 3) expressing IL-15". Claim 1, therefore, when properly construed, should be viewed as including SEQ ID NO: 1 and SEQ ID NO: 3, and not SEQ ID NO: 1 + SEQ ID NO: 2. This was clearly not recognized by the Examiner – see, e.g., the statement by the Examiner at the top of p. 2 of the Office Action dated August 26, 2005, wherein the Examiner acknowledges applicants' election of a composition, "... comprising DNA sequences SEQ ID NO 1 and SEQ ID NO 2".

As pointed out above, applicants' representative responded to the August 26, 2005 Office Action by, *inter alia*, canceling claims 1-16 as originally filed and substituting therefor new claims 17-27. In this new claim set, independent claims 17 and 22 clearly recite, *inter alia*, that the nucleotides of SEQ ID NO:1 encode IL-6, whereas it is the nucleotides of SEQ ID NO:3 that encode IL-15. As explained above, applicants respectfully submit that the new claims 17-27 are, in fact, directed to the invention elected by applicants. The Examiner is, therefore, requested to reconsider his issuance of the Notice and to consider the Amendment filed on February 21, 2006 as being compliant under 37 C.F.R. 1.121.

If Examiner Lieto believes that an interview would assist in clarifying for him any questions he may have concerning this matter, he is respectfully invited to telephone applicants' representative at the number below in order to arrange for such further interview.

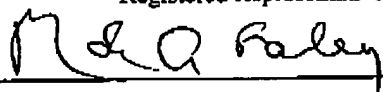
No fee, except for extending the due date from June 18, 2006 to August 18, 2006, is believed to be due with this Response. Should any fee be due, however, authorization is hereby provided to charge the required amount to Deposit Account No. 15-0700.

I hereby certify that this correspondence is being facsimile transmitted to (571) 273-8300, Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on: July 25, 2006

Respectfully submitted,

Mark A. Farley

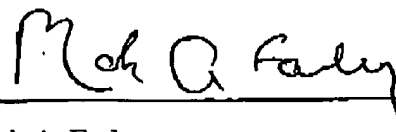
Name of applicant, assignee or
Registered Representative



Signature

July 25, 2006

Date of Signature



Mark A. Farley
Registration No.: 33,170
OSTROLENK, FABER, GERB & SOFFEN, LLP
1180 Avenue of the Americas
New York, New York 10036-8403
Telephone: (212) 382-0700

MAF:jl